

In re Application of:  
Shumate, et al.  
Application No.: 09/723,759  
Filed: November 27, 2000  
Page 2

PATENT  
Attorney Docket No.: AURO1100-5

### **REMARKS**

Claims 1-5 remain pending in the application unchanged.

#### **The Rejection of Claims 1 and 2 Under 35 U.S.C. §103(a)**

Claims 1 and 2 were rejected under 35 U.S.C. §103(a) as being unpatentable over Stylli et al. (5,985,214) in view of Liner et al. (4,038,149). Applicants respectfully request that this rejection be withdrawn because Stylli et al. does not qualify as prior art against the present application.

The present application and the Stylli et al. (5,985,214) patent were commonly owned at the time the claimed invention was made (common ownership is adequately evidenced by reference to the assignments recorded in the PTO). Accordingly, under 37 C.F.R. § 1.130(a), the applicant submits a terminal disclaimer with this response in accordance with 37 C.F.R. § 1.321(c) to disqualify the commonly owned Stylli et al. (5,985,214) patent as prior art. Therefore, applicants respectfully request that this rejection be withdrawn.

#### **The Objection of Claims 3-5**

Claims 3-5 were objected to as being dependent upon a rejected base claim. With the filing of the terminal disclaimer, the base claims should now be allowable. Therefore, applicants respectfully request that this objection be withdrawn.

In re Application of:

Shumate, et al.

Application No.: 09/723,759

Filed: November 27, 2000

Page 3

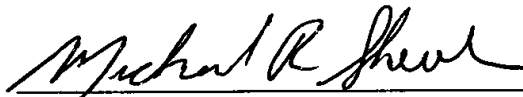
PATENT

Attorney Docket No.: AURO1100-5

The Examiner is invited to call Applicants' representative at the number below to expedite allowance of the pending claims if there are any questions. The Commissioner is hereby authorized to charge any other fees that may be associated with this communication, or credit any overpayment to Deposit Account No. 50-1355.

Respectfully submitted,

Dated: 1/28/2004



Michael R. Shevlin

Reg. No. 38,724

Telephone: (858) 638-6663

Facsimile: (858) 638-6727

GRAY CARY WARE & FREIDENRICH LLP  
4365 Executive Drive, Suite 1100  
San Diego, California 92121-2189  
USPTO Customer Number 28213